King Wholesale, Inc. *and* International Longshoremen's Association, AFL-CIO, Petitioner. Case 5-RC-11576

2 August 1983

DECISION ON RECONSIDERATION, ORDER, AND CERTIFICATION OF REPRESENTATIVE

BY MEMBERS JENKINS, ZIMMERMAN, AND HUNTER

On 14 June 1982 Hearing Officer Daniel J. Pagnano issued his Report on Objection in the above-entitled proceeding, in which he recommended that the Employer's objection be overruled and that Petitioner be certified.[1] On 30 September 1982 the Board issued a Supplemental Decision, Order, and Direction of Second Election,[2] in which, contrary to the Hearing Officer's recommendation, it sustained the Employer's objection. Thereafter, Petitioner filed a motion for reconsideration, a supporting brief, and an amendment and supplement thereto, and the Employer filed a brief opposing Petitioner's motion.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

In its Supplemental Decision, Order, and Direction of Second Election, the Board concluded that, during the campaign, Petitioner made an ambiguous offer to waive union initiation fees which the employees might reasonably have understood to be conditioned upon their signing authorization cards before the election. Because such a conditional offer to waive initiation fees is proscribed by the Supreme Court's opinion in *NLRB v. Savair Mfg. Co.*,[3] the Board set aside the election.

In support of its motion for reconsideration, Petitioner argues that the Board erred by failing to consider the entire context in which its offer to waive initiation fees was made, and that when so considered it is clear that there was no ambiguity in its waiver.

On 7 July 1981 Petitioner's agent Sullivan spoke with the Employer's employees at Petitioner's initial organizing meeting.[4] He began by describing the steps required for Petitioner to become the employees' certified bargaining representative. In this connection, he stated that if the Board were satisfied that at least 30 percent of the employees in the unit desired an election, based on their signing authorization cards, an election would be directed. He noted that, if Petitioner won the election, the Board would issue a certification, and the Employer would then be required to bargain in good faith concerning terms and conditions of employment. He then told the employees that, if Petitioner won such an election and was certified, he would ask the International to issue a charter making the Employer's employees an autonomous, self-governing local union of the International Longshoremen's Association. He noted that this was appropriate in their case because, as delivery drivers, they did not fit into any of Petitioner's established locals. Subsequently, in response to employee questions, Sullivan described the mechanics of bargaining for a collective-bargaining agreement, emphasizing to the employees that the International would assist them in bargaining but that they would form their own bargaining proposals and would govern themselves within the parameters and minimum standards set forth in the International's constitution. He was also asked about dues and initiation fees, and he answered that:

> . . . there's a minimum initiation fee and I believe it's around $50 or $60 that must be paid, of which all but $15 remains in the local union treasury; that the initiation fee, under the terms of the constitution and bylaws, is automatically waived for 60 days and then beyond that application may be made by the local union for an extension of that period, but it is solely a matter of self government. . . .[5]

In our prior decision we noted that this statement is susceptible to varying interpretations, including a reading under which the 60-day period would appear to begin to run from the time the statement was made, 7 July, and thus would expire prior to the 10 September election. In its motion for reconsideration, however, Petitioner argues that it is clear from the total context of Sullivan's presentation to the employees that the discussion of initiation fees took place immediately after he had outlined the progression from petition to election

[1] The election was conducted pursuant to a Stipulation for Certification Upon Consent Election. The tally was: 12 for, and 6 against, Petitioner. There were no challenged ballots.

[2] 264 NLRB No. 118.

[3] 414 U.S. 270 (1973).

[4] Sullivan's testimony was credited by the Hearing Officer.

[5] The "terms of the constitution" to which Sullivan appears to have been referring in his remarks to employees are set forth in art. XVI, sec. 1(c), which provides:

> The requirements for the payment of initiation fees shall not apply to newly organized locals for a period of sixty (60) days after their organization. On application of a Local Union, the International Executive Officers shall have the power to permit, in writing, partial or full waiver of the initiation fee in the case of newly organized shops or establishment.

There was no showing, and Petitioner does not contend, that Sullivan either distributed copies of the constitution or read this provision to the employees. Accordingly, we give it no weight in determining whether Sullivan's remarks constituted an unlawful inducement to employees to sign authorization cards.

to certification and, finally, to the postelection organization of a local. Read in context, Petitioner contends, its offer was to waive initiation fees for 60 days *after* an election had been won and a local had been established.

In deciding whether Petitioner's offer was improper, we are confronted with a problem which, while inherent in all such cases, is particularly difficult here. The problem is to reconstruct, from testimony which is inevitably somewhat sketchy since it was given after the passage of time, the context and thus the import of Petitioner's statements. Upon careful reconsideration, we are persuaded that Sullivan did not violate the principles of *Savair* when he told the employees that there was an initiation fee, but that all but $15 of it would remain in the "local union treasury"; that under the "terms of the constitution and bylaws" the fee would be waived automatically for 60 days and then, beyond that, application could be made by the "local union" for an extension of that period; and that this was solely a matter of "self government." Not only did Sullivan preface these statements with a detailed account of the election and certification process and the formation of a local union, but he referred back to these concepts in the course of making the statement objected to under *Savair*. Thus, the employees were informed effectively that, until such time as an election had been held, Petitioner certified, and a local union organized, there would be no "local union" in existence to engage in "self government" or to retain all but $15 of the initiation fee. In context, therefore, Sullivan's statement made it clear that the 60-day waiver period would not begin to run until some point after the election.

Moreover, we note that the authorization cards which Sullivan distributed to the employees were single-purpose cards which merely authorized Petitioner to represent the employees, and Sullivan's only reference to the cards was a means of obtaining a Board-run election. The cards did not provide for membership in Petitioner or any local, and there is no evidence that the subject of such membership was discussed as a *present* option.

We grant Petitioner's motion for reconsideration and, accordingly, we shall certify Petitioner as the collective-bargaining representative of the Employer's employees in an appropriate unit.

ORDER

It is hereby ordered that our prior decision herein (264 NLRB No. 118) be, and it hereby is, vacated.

CERTIFICATION OF REPRESENTATIVE

It is hereby certified that a majority of the valid ballots have been cast for International Longshoremen's Association, AFL-CIO, and that, pursuant to Section 9(a) of the National Labor Relations Act, as amended, the said labor organization is the exclusive representative of all the employees in the following appropriate unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, or other terms and conditions of employment:

> All full-time and regular part-time driver-salesmen employed by the Employer at its Chantilly, Virginia facility, but excluding all other employees, warehousemen, office clerical employees, professional employees, guards and supervisors as defined in the Act.